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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,123	05/06/2004	Jurg Attinger	2701	7247
26356	7590	03/15/2007		
ALCON IP LEGAL, TB4-8 6201 SOUTH FREEWAY FORT WORTH, TX 76134			EXAMINER RYCKMAN, MELISSA K	
			ART UNIT	PAPER NUMBER
			3734	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/840,123

Applicant(s)

ATTINGER ET AL.

Examiner

Melissa Ryckman

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/6/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is responsive to applicants' response filed 11/13/06. Claims 1, and 3-7 are pending in this application, claim 2 has been canceled.

The remarks filed in said amendment directed to the references below has been considered, however, they are not deemed to be persuasive.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the variations (flared, beveled, and chamfered) of the cut out portion of the wound clamp must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Utz (U.S. Patent No. 4,832,027).

Utz discloses a clamp as referred to in claim 1 comprising: a body having a first and second half (5), at least one hinge connecting the first half to the second half (2), at least one spring biasing the first half against the second half about the hinge (3), a plurality of prongs (4) associated with both the first half and the second half.

Utz discloses a clamp as referred to in claim 1 where the first half and second half each contain cut out portions (Figure 1) that form an aperture when the first half and the second half are biased together by the spring.

Utz teaches a clamp as taught in claims 5-7 where the cut out portions are flared which is defined by to expand or open outward in shape (Figure 2a), beveled which is defined by an angle of a line or surface that meet at an angle other than 90 degrees (Figure 2e) or chamfered which is defined by to cut a groove in (Figure 2b).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Utz (U.S. Patent No. 4,832,027) as applied to claim 1 above, further in view of Jugenheimer et al. (U.S. Pub. No. 2004/0097982).

Utz discloses the claimed invention except a clamp body made of a lubricious material, Jugenheimer et al. teaches a Teflon clamp (para. 182).

It would have been obvious to one of ordinary skill in the art to modify the clamp of Utz with the teachings of Jugenheimer because Teflon is an appropriate material for a clamp as it increases the lubricity of the clamp.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Utz (U.S. Patent No. 4,832,027) as applied to claim 1 above, further in view of Bradley et al. (U.S. Patent No. 5,769,367).

Utz discloses the claimed invention except a clamp body made of a luminous material, Bradley et al. teaches a luminous clamp (col. 3 ll. 62-65).

It would have been obvious to one of ordinary skill in the art to modify the clamp of Utz with the teachings of Bradley et al. because a material that glows would be ideal for surgeries performed in the dark.

### ***Double Patenting***

Claims 1 and 3-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, and 3-8 of copending Charles et al. (Pub. No. 2004/0133218) further in view of Hubbes (DE891452).

This is a provisional obviousness-type double patenting rejection.

Regarding claim 1 Charles et al. claims a clamp as referred to in claim 1 comprising: a body having a first and second half (claim 1a), at least one spring biasing the first half against the second half about the hinge (claim 1b), a plurality of prongs (claim 1c) associated with both the first half and the second half. Charles et al. does not claim at least one hinge connecting the first half to the second half, however Hubbes teaches a hinge connecting the first half to the second half (Fig. 1, 3).

The combination of Charles et al. with Hubbes would have been obvious to one of ordinary skill in the art as a hinge is a well known way of connecting two halves of a clamp in order to make a flexible connection between the two halves.

Regarding claim 1 Charles et al. claims a clamp where the first half and second half each contain cut out portions (claim 3) that form an aperture when the first half and the second half are biased together by the spring.

Regarding claim 3 Charles et al. claims a clamp where the body comprises a lubricious material (claim 4).

Regarding claim 4 Charles et al. claims a clamp where the body comprises a luminous material (claim 5).

Regarding claim 5 Charles et al. claims a clamp where the cut out portions are flared (claim 6).

Regarding claim 6 Charles et al. claims a clamp where the cut out portions are beveled (claim 7).

Regarding claim 7 Charles et al. claims a clamp where the cut out portions are chamfered (claim 8).

### ***Response to Arguments***

Applicant's arguments filed 11/13/06 have been fully considered but they are not persuasive. Applicant generally argues the following point:

- Utz does does not disclose a central aperture.

The examiner respectfully disagrees concerning the argument that there is no central aperture in Utz. There are apertures as seen in Figs. 1 and 2 of Utz, the openings (9) are by definition apertures.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571)-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR

  
MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER